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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re D.L., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

DONNA L. ,

Defendant and Appellant.

A154143

(San Francisco City & County
Super. Ct. No. JD16-3190)

Mother, Donna L., appeals from the grant of a three-year restraining order requiring her to stay away from her son, D.L. (minor), and L.M. (foster mother). Mother contends insufficient evidence supports the order as to minor. We affirm.

I. BACKGROUND

We incorporate by reference our prior nonpublished opinion, which denied mother's petition for an extraordinary writ challenging the juvenile court's order setting a hearing on a permanent plan for her child under Welfare and Institutions Code¹ section 366.26, *Donna L. v. Superior Court* (Jan. 5, 2018, A152640). Below, we summarize only those facts necessary to resolve this appeal.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In June 2016, mother arrived at a San Francisco Human Services Agency (Agency) facility and asked the Agency to take minor. She admitted she could not keep him or his then-nine-year-old brother safe due to minor's violent and uncompromising behavior. Minor was detained and placed in foster care. A disposition report filed the following month discussed multiple prior child welfare referrals for the family, including an incident in May 2016, when mother contacted adult protective services seeking help because minor had punched her and hit her with a bunk bed ladder. Mother called minor " 'mean, crazy, and violent' " and said she contacted "Child Crisis" and the police for help with minor after he tried to burn the yard outside their home.

The disposition report noted minor's therapist diagnosed him with other trauma related stress disorder and said he has characteristics of autism spectrum disorder. Minor reported in October 2015, that the prior year mother told him she hated him and he was an awful son. Minor's therapist believed mother and minor "trigger" one another and was concerned about mother's emotional regulation. The Agency also expressed concern about mother's emotional regulation, noting she called service providers and the Agency several times a day, and appeared highly anxious and impulsive. The court declared minor to be a dependent child and ordered reunification services for mother.

In October 2016, the juvenile court granted mother's unopposed section 388 petition requesting minor be returned to her. On April 4, 2017, however, the Agency filed a section 387 supplemental petition again seeking to remove minor from mother's care based on a March 2017 incident in which minor pushed mother. Mother told her therapist, and confirmed to an Agency social worker, she was planning to relinquish parental rights, did not want minor back in her home, and did not want any further contact with him. The juvenile court renewed the dependency, removed minor to foster care, and ordered reunification services and supervised visits for mother.

A status report filed in August 2017, in advance of minor's 12-month review hearing, reported mother had placed a hold on minor's medication account at the pharmacy, preventing his foster mother from picking up his medications. The report also noted mother had called foster mother several times and hung up. An addendum to the

report stated mother called minor on July 25, 2017, and told him she wanted him to come home, saying he was “a paycheck” to his foster mother, the Agency, and service providers. Mother also told minor he was being abused by foster care and child protective services (CPS).

On August 10, 2017, counsel for minor filed a section 388 petition seeking to limit mother’s educational and developmental rights. The petition alleged minor was about to begin middle school and though he was placed in foster care in Modesto, mother was insisting he attend school in San Francisco. To attend school in San Francisco, minor would have to get up at 4:00 a.m. and travel over two hours each way, exposing him to sleep deprivation and hours of time in traffic each day. Mother opposed the petition.

Just prior to the 12-month review hearing, the Agency filed a second addendum report, recommending that mother’s services be terminated. The report described mother’s pattern of behaviors designed to disrupt minor’s placement in foster care, including falsely accusing foster mother of not caring for minor, calling “non stop” and hanging up, and filing complaints against foster mother. Mother also confused minor by telling him foster mother did not care for him, he would get lost in the school in Modesto, and she was talking to a senator about abuse he is experiencing from CPS. Mother violated court orders by talking to minor on the phone without supervision, while he was hiding in the school bathroom and supposed to be in class. The report noted “mother has exhibited manipulative behaviors which further indicate she has some serious mental health issues.”

At the contested 12-month review hearing, the court heard testimony from two Agency social workers and minor’s support counselor at the foster agency. His support counselor testified, among other things, that minor’s foster mother had received a bottle of his prescription medication from mother that was missing pills and contained pills that were not the labeled medication. Both social workers opined mother had not made significant progress in resolving the problems that led to initial removal and did not have the capacity and ability to complete the objectives of the treatment plan. One of the social workers testified in detail about mother’s ability to manipulate and circumvent

legal and medical systems and opined that “this is a very severe case of child abuse, emotional abuse, and it’s extreme high harm and risk to [minor].” She testified mother refuses to follow court orders, makes false accusations against case workers, protective services, and the foster home, and needs a “psychological intervention herself.”

The juvenile court terminated mother’s reunification services, limited mother’s educational rights, terminated visits with minor, ordered mother to stay away from and have no communication with foster mother, and set the matter for a section 366.26 hearing. Mother filed a petition for extraordinary writ relief challenging that order, which we denied. (*Donna L. v. Superior Court, supra*, A152640.)

In November 2017, minor’s counsel filed a request for a restraining order against mother on behalf of minor and foster mother. The request alleged mother (1) continued to contact foster mother in spite of a stay-away order issued in October 2017; (2) harassed foster mother by having minor text foster mother; (3) harassed foster mother by suing her in small claims court in San Francisco though foster mother lives in Merced County; (4) knew foster mother’s address though it was confidential and foster mother had to move out of fear of mother’s stalking and harassing behavior; and (5) minor had severe emotional and mental health issues from living with mother and her actions were significant disruptions in his rehabilitation.

A hearing on the restraining order was held on February 16, 2018. The juvenile court heard testimony from several witnesses.

Foster mother testified the juvenile court’s October 2017 stay-away order was ineffective because mother had been text messaging foster mother and having mail sent to her home.² Mother would also call foster mother’s home landline phone and cell phone and hang up. Foster mother never gave mother her cell phone number but received at least two text messages from mother after the court’s stay-away order. Foster mother

² Foster mother testified, “Social Security sent mail to my home that’s addressed to [mother] with my address on it.” Foster mother did not give her address to mother and testified the placement was confidential.

began looking for another place to live and eventually moved because she was afraid for minor's safety, and feared mother coming to her home and harassing her.

Foster mother also testified mother sued her in small claims court for return of a cell phone watch mother had given minor. Foster mother never had the watch in her possession. Nonetheless, she drove two hours to San Francisco to appear in small claims court, but mother did not appear and the case was dismissed without prejudice.

Mother also made an unsubstantiated complaint to CPS that foster mother was not taking care of minor and would not get him glasses he needed. Foster mother further testified mother wrote an article about minor that accused foster mother of trying to keep mother and minor apart. Minor found and read the article on the Internet.

Foster mother testified mother had unsupervised contact with minor at the Agency's office in December 2017 and told him she was doing everything she could to get him back. After the contact, minor became very distracted, anxious, and stressed out. He told foster mother he wanted to go back home with mother but was worried about the past abuse. Minor also said he was afraid that his mother was going to be charged as a criminal and "get in trouble" because she needed his address "so that she can come and get him and take him to Hawaii." Foster mother was afraid that if mother came to her home, minor would leave with her because he does not understand he is not to go with her.

A transportation driver (driver) for the Agency also testified. He was scheduled to transport minor home from a visit with his brother on December 21, 2017. The driver was running late. The driver was not aware at the time that there was a stay-away order against mother. When he called and was unable to reach the person coordinating the visit, he called mother's phone number and asked her to tell everyone he was late. A short time later, just after he had parked the car in front of the visitation center, he received a call back from mother. She asked for the address where minor was residing, then immediately said, "I should not have asked you that" and asked him to "Forget it." About 40 minutes later, after he had picked up minor and was driving him back to his placement, mother called the driver again. He let the call go to voice mail, and mother

called again from a different number. The driver answered the phone, and mother asked to speak with minor. When he refused, mother asked him to tell minor she loved him very much, that she had his Christmas gifts, and that they would be there when he got back. On February 1, 2018, when the driver was again to transport minor back to his placement, mother approached him outside the visitation center and asked him where he was going, where minor was staying, and about the length of his trip.

A case manager from the foster agency also testified about contact she had with mother in July 2017 when the case manager dropped minor off in San Francisco for camp. While she was waiting in line with minor to register him for camp, mother approached them, carrying a bag and medication. The case manager was aware mother had been ordered not to have contact with minor. She told mother she was not allowed to be near minor, but mother ignored her and approached minor. Mother said “hi” to minor, hugged him and took photos with him. Mother told the case manager she had medication for minor, but when the case manager asked for it, mother refused. The case manager testified when she had picked minor up from his foster home earlier, he had his own bag of belongings and medication in a separate bag to bring to camp. Mother told the case manager she had minor’s luggage and the case manager could take the bags minor came with back to the foster home. Mother wandered away for a short time, then came back as minor was waiting in line to board the bus and told the man at the station she had minor’s bags and medication, gave them to him, and he took them. The case manager told mother repeatedly (five or six times) that she was not allowed to be near minor. Once minor was on the bus, the case manager told the man at the station that she had minor’s actual bag and medication, showed him her badge and explained the situation. When questioned by the court, the case manager affirmed she did not know whether the medication provided by mother was even medication or proper medication.

Mother testified at the hearing and denied many of the statements by the other witnesses. She did admit she had obtained foster mother’s address and phone number from school records.

The juvenile court admitted several status review reports over the objection of mother's counsel for the limited purpose of showing a pattern of mother's harassment of foster mother and not abiding with specific court orders. The court found foster mother, the driver, and the case manager to be credible and did not find mother's testimony credible. After citing several passages from our prior opinion and the "memorable" testimony of minor's social worker at the status review hearing, the court observed, "there continues to be evidence of confusion and chaos that [mother] creates with mixed messaging and violations of court orders under the guise of innocent interactions" The court further explained: "There is really in the record a pattern of harassment, of threatening behavior. The entire totality of the behavior as it is perceived by [foster mother] is threatening and harassing. It's much like stalking behavior." Noting mother had been ordered not to contact foster mother, the juvenile court found "there were many indirect contacts with both [foster mother] and [minor]. . . . [which] is every bit as dangerous for a troubled boy with mental health issues as direct contact." The court found "ample, ample evidence" to support the issuance of a permanent restraining order, concluding "[t]here really is a huge risk of harm here given all the contact after this Court has ordered absolutely no contact," contact which "illustrates [the] emotional abuse that's continuing" The court signed a three-year protective order, prohibiting mother from having any direct or indirect contact with foster mother or minor.

Mother appealed.

II. DISCUSSION

A. Standard of Review

Some courts have applied the substantial evidence standard in reviewing a restraining order issued under section 213.5. (*In re N.L.* (2015) 236 Cal.App.4th 1460, 1465–1466; *In re B.S.* (2009) 172 Cal.App.4th 183, 193.) Under this standard, "we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed." (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211.) The court in *In*

re Brittany K. (2005) 127 Cal.App.4th 1497, 1512, applied the substantial evidence standard to support the facts and the abuse of discretion standard to impose a restraining order. (*N.L.*, at p. 1466.) Here, under either standard of review, the juvenile court did not err.

B. Substantial Evidence

Mother contends the three-year restraining order issued pursuant to section 213.5 was not supported by substantial evidence. We disagree.

Section 213.5, subdivision (a) provides in pertinent part: “[T]he juvenile court has exclusive jurisdiction to issue ex parte orders . . . enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, . . . destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child” The issuance of such an order “does not require ‘evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child.’ [Citation.] Nor does it require evidence of a reasonable apprehension of future abuse.” (*In re C.Q.* (2013) 219 Cal.App.4th 355, 363.)

As an initial matter, we reject mother’s argument that issuance of a restraining order under section 213.5 requires evidence of violence or physical harm. The case mother cites for this proposition, *In re B.S.*, *supra*, 172 Cal.App.4th at page 194, did not so hold. There, the court rejected the father’s attempt to analogize issuance of a restraining order under section 213.5 in the first instance to renewal of a protective order under Family Code section 6200 et seq. (*B.S.*, at pp. 193–194.) The court found the better *analogy* was to Family Code section 6340, which permits issuance of a protective order if “ ‘failure to make [the order] may jeopardize the safety of the petitioner.’ ” (*B.S.*, at p. 194.) Though the court upheld the restraining order against the father because there was evidence he presented a risk of physical harm to the child, it did not hold such evidence is required. (*Ibid.*)

Moreover, a similar argument was expressly rejected in *In re Cassandra B.*, *supra*, 125 Cal.App.4th at pages 211–212. There, the mother had attempted to gain

unauthorized entry to the home of Cassandra’s caregivers without their knowledge, showed up at her school and followed the caregiver’s car after school, and threatened to remove Cassandra from their home. (*Id.* at p. 212.) The mother argued because no violent behavior was established, the juvenile court had no authority to issue the restraining order against her. (*Id.* at p. 211.) The appellate court disagreed, noting “not all of the conduct listed in section 213.5, subdivision (a) necessarily involves violent behavior, and we decline to read this element into the plain language of the statute.” (*Id.* at p. 211.) Specifically, the court observed that “ ‘molest[ation]’ ” need not be sexual; it may include activity that is troubling, disturbing, annoying, or vexing. (*Id.* at p. 212.) The court concluded there was ample evidence the mother was “ ‘molesting’ ” Cassandra and expressly rejected her “assertion that violence must be present for the imposition of a restraining order under the plain meaning of section 213.5, subdivision (a)(1).” (*Id.* at p. 212.)

Similarly, the court in *In re Bruno M.* (2018) 28 Cal.App.5th 990, rejected a father’s contention there was no substantial evidence to support inclusion of children in a restraining order because he “ ‘was never aggressive with the children, and [they] were never in the line of fire’ of his assaults on [the] mother.” (*Id.* at p. 997.) The court expressly stated, “There need only be evidence that the restrained person ‘disturbed the peace’ of the protected child. [¶] In this context, *disturbing the peace* means ‘ ‘conduct that destroys the mental or emotional calm of the other party.’ ” ’ ” (*Ibid.*) In any event, here the evidence shows that mother interfered with access to medications intended for minor and provided caretakers with incorrect and unlabeled medicine, which constitutes evidence of physical harm and threatens the safety of minor.

Substantial evidence supports imposition of a restraining order in this case. Throughout the dependency proceeding, mother was unable to regulate her emotions around minor and behaved in ways that caused him to feel unloved, unwanted, anxious, confused, worried, and scared. Mother referred to minor in derogatory terms, such as “ ‘mean, crazy and violent’ ” and “an awful son.” Mother also repeatedly made inappropriate remarks to minor. She told him, among other things, about his case, said he

was a “paycheck” to his foster mother, and told him he was being abused by his foster mother and CPS. *After* the trial court had terminated her visits with minor, mother told minor that she would take him to Hawaii and she was doing everything she could to get him back. Mother also asked the driver to tell minor she had his Christmas gifts waiting for him.

In many other ways, mother’s behavior was counter to minor’s emotional well-being. She fought to have him travel in traffic for over four hours a day to go to school in San Francisco although there was a school near his foster placement which was willing to adhere to his individual education plan. Mother put a hold on minor’s account at the pharmacy so foster mother was unable to pick up his medication and gave foster mother incorrect medication on another occasion. Mother also resisted giving minor’s case manager what she said was minor’s medication at the camp drop off, and the case manager did not know whether it was even minor’s proper medication.

Mother violated the court’s stay-away order on more than one occasion. Mother obtained minor’s confidential address and phone number from school records and attempted to obtain his residence location from the driver who was unaware of the stay-away order in place against mother. Mother repeatedly called and texted foster mother’s phone, attempted to contact minor by calling the driver, asked the driver to give minor a message, and engaged in a course of harassing and threatening conduct toward foster mother. We agree with the juvenile court that this behavior falls within the definition of “stalking.” (See *In re Brittany K.*, *supra*, 127 Cal.App.4th at pp. 1511–1512 [grandmother’s attempts to make unauthorized contact with children and other behavior, such as going to school unannounced, constituted both “ ‘molesting’ ” and “ ‘stalking’ ” and supported issuance of restraining order under § 213.5].) Mother’s conduct also constitutes “molest[ation]” under section 213.5. (*Brittany K.*, at p. 1512; *In re Cassandra B.*, *supra*, 125 Cal.App.4th at p. 212.) And the extensive evidence of mother’s manipulative behavior and severe emotional abuse certainly disturbed the peace of minor and threatened his emotional and physical well-being. (See *In re Bruno M.*, *supra*, 28 Cal.App.5th at p. 997.).

We agree with the juvenile court that “ample, ample evidence” supported the issuance of a restraining order on this record, and the court did not abuse its discretion in issuing one.

C. Expert Testimony of Emotional Harm

Without citation to any authority, mother “urges this court to impose a requirement in juvenile court proceedings of expert testimony to justify the imposition of the restraining order based on emotional harm.” The legislative authority of this State, except the people’s powers of initiative and referendum, is vested in the Legislature. (Cal. Const., art. III, § 3; art. IV, § 1.) Mother’s argument is more appropriately directed to that body, not this court.

III. DISPOSITION

The February 16, 2018 order is affirmed.

MARGULIES, J.

WE CONCUR:

HUMES, P. J.

SANCHEZ, J.

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In re D.L.